

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 201902967	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/29/2019 9:15 PM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 9/29/2020	EO SOL 5/16/2021	
Date/Time CV Reported Fri, 04/05/2019 10:57 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/05/2019 10:57 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Canale	10524	960317	PSA 7
2. SGT Joseph Walsh	1188	942685	PSA 7
3. POM Pasquale Dethomas	11005	955873	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Kendrick	05396	958748	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Canale	Discourtesy: Police Officer Joseph Canale spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Joseph Canale	Force: Police Officer Joseph Canale used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Pasquale Dethomas	Force: Police Officer Pasquale Dethomas used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Pasquale Dethomas	Abuse: Police Officer Pasquale Dethomas threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Joseph Canale	Abuse: Police Officer Joseph Canale threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
F.SGT Joseph Walsh	Abuse: Sergeant Joseph Walsh did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On April 5, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB on behalf of himself and his fiancé § 87(2)(b).

On March 29, 2019, at approximately 9:15 PM, § 87(2)(b) and § 87(2)(b) were walking down 161<sup>st</sup> Street between Tinton Avenue and Union Avenue in the Bronx. An unmarked police vehicle stopped at the corner of Tinton Avenue and 161<sup>st</sup> Street, and PO Joseph Canale of PSA 7, who was in the vehicle, asked § 87(2)(b) if he was “good.” § 87(2)(b) stated that he was fine and asked PO Canale if he was good, to which PO Canale allegedly said, “Shut the fuck up and keep it moving,” (**Allegation A, Discourtesy:** § 87(2)(g)). § 87(2)(b) argued with PO Canale, who then got out of the vehicle with his partner, PO Pasquale Dethomas of PSA 7, and stated that he was going to receive a summons for disorderly conduct. Also present were Sgt. Joseph Walsh and PO Steven Kendrick of PSA 7, who were in a separate vehicle but also stopped and followed § 87(2)(b). § 87(2)(b) refused to take the summons and began walking away, after which PO Canale moved behind § 87(2)(b) and took him to the ground (**Allegation B, Force:** § 87(2)(g)). The takedown resulted in a laceration to § 87(2)(b)'s face. PO Canale and PO Kendrick then handcuffed § 87(2)(b). § 87(2)(b) attempted to get closer to § 87(2)(b) and PO Dethomas allegedly pushed her back with both hands on her chest (**Allegation C, Force:** § 87(2)(g)). PO Canale and PO Pasquale told her to move back or she would be arrested (**Allegations D and E, Abuse of Authority:** § 87(2)(g)). An ambulance arrived on scene, but EMS did not examine § 87(2)(b). Officers took § 87(2)(b) to the PSA 7 stationhouse, where he requested medical attention but did not receive it until 45 minutes later (**Allegation F, Abuse of Authority:** § 87(2)(g)). § 87(2)(b) was arrested for § 87(2)(b).

Body worn camera (BWC) footage of the incident was obtained from PO Canale, Sgt. Walsh, PO Dethomas, and PO Kendrick [BR 04-08, 12].

### Findings and Recommendations

#### Allegation (A) Discourtesy: PO Joseph Canale spoke discourteously to § 87(2)(b)

It is undisputed that PO Canale spoke to § 87(2)(b) before exiting his vehicle.

§ 87(2)(b) testified to the CCRB that he and § 87(2)(b) were speaking at a normal conversational tone and volume while walking along 161<sup>st</sup> Street [BR 02]. § 87(2)(b) had previously said in his CCRB intake call that he and § 87(2)(b) were arguing [BR 01]. PO Canale, who was in the passenger's seat of the vehicle, told § 87(2)(b) “Shut the fuck up and keep it moving,” after which § 87(2)(b) and PO Canale argued. § 87(2)(b) testified that she did not hear what was said between § 87(2)(b) and PO Canale because she had already begun walking away, although she heard § 87(2)(b) tell the officers to “get the fuck out of here,” [BR 10]. § 87(2)(b) approached § 87(2)(b) and made him turn around and begin walking away.

PO Canale testified that he and PO Dethomas had stopped their vehicle at a red light and observed § 87(2)(b) in the middle of the crosswalk while blocking vehicular traffic and yelling and using profanity towards § 87(2)(b) [BR 14]. The traffic light cycled green and then red, but § 87(2)(b) did not move. PO Canale instructed § 87(2)(b) over the loudspeaker of his vehicle to move out of the street because he was blocking traffic, but § 87(2)(b) ignored his instructions and began yelling at the officers. PO Canale denied telling § 87(2)(b) to “shut the fuck up and keep it moving,” or using any other profanity when addressing § 87(2)(b). PO Canale and PO Dethomas moved their vehicle to the corner and exited with the intention of moving § 87(2)(b) out of the road. At that time, § 87(2)(b) began pushing § 87(2)(b) onto the sidewalk and telling him to leave. PO Canale and § 87(2)(b) argued, after which PO Canale stated that § 87(2)(b) was going to be issued a summons for disorderly conduct. PO Canale approached § 87(2)(b) who began walking away.

PO Dethomas testified that he and PO Canale did not speak to § 87(2)(b) at all before exiting their vehicle [BR 15]. He denied hearing PO Canale using profanity towards § 87(2)(b) Sgt. Walsh and PO Kendrick, who were in a separate vehicle, both testified that they were approximately five car lengths behind PO Canale and PO Dethomas' vehicle and that they did not hear the initial conversation between § 87(2)(b) and officers, nor did they hear PO Canale use profanity while speaking to § 87(2)(b) [BR 13, 16]. PO Dethomas also noted that § 87(2)(b) appeared to be angry and intoxicated as he began walking away from officers.

PO Canale's BWC footage from IA 71 has audio which begins at 30 seconds [BR 04]. In the 30 seconds without audio, PO Canale is seen exiting his vehicle and beginning to walk behind § 87(2)(b) and § 87(2)(b) § 87(2)(b) is heard saying to officers, "Keep it moving," as well as, "You're not detaining me, keep it fucking moving." PO Canale is not heard using profanity towards § 87(2)(b) PO Dethomas, PO Kendrick, and Sgt. Walsh's BWC footage begins after they have already begun following § 87(2)(b) and § 87(2)(b) on foot [BR 06, 08, 12].

§ 87(2)(g)

**Allegation (B) Force: Police Officer Joseph Canale used physical force against § 87(2)(b)**

It is undisputed that, while attempting to stop § 87(2)(b) to issue a summons to him, PO Canale took § 87(2)(b) to the ground.

§ 87(2)(b) testified that he walked backwards away from the officers as he was arguing with them [BR 02]. During that time, PO Dethomas remained in front of § 87(2)(b) while PO Canale moved behind him. Without issuing any commands beforehand, PO Canale quickly turned § 87(2)(b) around and forced him onto the ground, where he landed on the left side of his face before losing consciousness. When he awoke an unspecified amount of time later, he was still on the ground but was in handcuffs. § 87(2)(b) sustained a laceration to the left side of his face next to his eye which was bleeding profusely. § 87(2)(b)'s testimony was consistent with that of § 87(2)(b) [BR 10].

EMS Electronic Prehospital Care Report (PCR) for § 87(2)(b) obtained from FDNY notes that EMS responded to the PSA 7 stationhouse, where § 87(2)(b) was in a holding cell [BR 11]. § 87(2)(b) stated that his face was hurt and bleeding on the left side but refused to let EMS examine him. § 87(2)(b)'s medical records from § 87(2)(b) list his chief complaint as head trauma with a laceration to the left side of his face. A CT scan showed no acute damage [BR 09].

PO Canale testified that after § 87(2)(b) began walking away, PO Canale instructed him to walk back because he was going to receive a summons [BR 14]. PO Canale followed § 87(2)(b) for approximately 10 feet and then took hold of § 87(2)(b)'s arms. § 87(2)(b) pulled his right arm out of PO Canale's grip and attempted to position § 87(2)(b) in between himself and PO Canale. While still holding § 87(2)(b)'s jacket with his left hand, PO Canale reached for § 87(2)(b)'s right elbow with his right hand. Then, as § 87(2)(b) was still pulling away from PO Canale, he and PO Canale turned in a counterclockwise motion and fell to the ground. § 87(2)(b) landed face-down onto the pavement and PO Canale landed directly on top of him. Once on the ground, § 87(2)(b) stopped resisting and placed his arms behind his back. At that time, a crowd of approximately 20 people had gathered in the area.

PO Canale's BWC footage from IA 71 is consistent with his statement [BR 04]. PO Canale is seen following § 87(2)(b) for at least one minute and telling him to stop because he is being issued a summons. PO Canale grabs § 87(2)(b) and within seconds both appear to land on the ground. It is unclear what takes place due to the darkness and fast movement of the video. However, later in the video, § 87(2)(b) asks why PO Canale took § 87(2)(b) to the ground, to which PO Canale replies, "Because I told him to stop and when I grabbed him, he started resisting." PO Canale also

tells § 87(2)(b) at a later point, “And after I grabbed him, what did he do? He swung his arm and that’s why I brought him to the ground.”

PO Dethomas, Sgt. Walsh, and PO Kendrick all testified that they did not see how § 87(2)(b) ended up on the ground [BR 13, 15, 16]. PO Dethomas and Sgt. Walsh both stated that they saw § 87(2)(b) swing his arm after PO Canale grabbed him. PO Dethomas had turned his attention to the bystanders that had begun to gather nearby. Sgt. Walsh focused on an individual who had gotten out of his vehicle a few feet away. PO Kendrick did not see how § 87(2)(b) ended up on the ground because he was approximately 25 feet away and the area was dark.

In both PO Dethomas and Sgt. Walsh’s BWC videos from IAs 73 and 75, respectively, PO Canale is seen approaching § 87(2)(b) from behind and appears to pull him back before they both fall to the ground, although it is unclear whether § 87(2)(b) makes any movements or swings his arm [BR 06, 08]. PO Kendrick’s BWC footage from IA 98 corroborates the fact that he was far away from PO Canale and § 87(2)(b) when the takedown took place [BR 12].

The threat, resistance, and injury (TRI) report prepared by Sgt. Walsh notes that while PO Canale attempted to control § 87(2)(b) to place him in handcuffs, § 87(2)(b) pulled his arm away and was brought to the ground [BR 27]. The photo attached to the TRI report shows that § 87(2)(b) sustained a laceration near his left eye, and that the laceration was bleeding. The medical treatment of prisoner report notes that § 87(2)(b) was taken to § 87(2)(b) where he was treated for a laceration on the left side of his face [BR 28].

NYPD Patrol Guide Procedure 221-01 takes the following factors into consideration when determining whether the use of force is reasonable: nature and severity of the crime; actions taken by the subject; duration of the action; immediate of the perceived threat or harm to the subject, MOS, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to MOS; size, age, and condition of the subject in comparison to MOS; subject’s violent history, if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant or narcotic affecting pain tolerance or increasing the likelihood of violence [BR 17]. Patrol Guide Procedure 221-02 instructs officers to apply no more force than is necessary to gain control of a subject [BR 18]. Patrol Guide Procedure 221-03 regarding reporting of use of force and injuries notes that a forcible takedown is a level one use of force [BR 19].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Force: Police Officer Pasquale Dethomas used physical force against § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Pasquale Dethomas threatened to arrest**

§ 87(2)(b)

**Allegation (E) Abuse of Authority: Police Officer Joseph Canale threatened to arrest § 87(2)(b)**

It is undisputed that PO Canale and PO Dethomas threatened to arrest § 87(2)(b). The force that PO Dethomas used against § 87(2)(b) is in dispute.

§ 87(2)(b) testified that after PO Canale handcuffed § 87(2)(b), PO Canale stayed on top of § 87(2)(b) [BR 10]. § 87(2)(b) moved forward to stop PO Canale, but PO Dethomas put both hands on her chest and pushed her back, then told her twice to back up. As a crowd gathered, PO Dethomas then told § 87(2)(b) to calm the gathering crowd or she would be arrested.

PO Dethomas' BWC footage shows PO Dethomas speaking with § 87(2)(b) after § 87(2)(b) is taken to the ground (IA 73 at 0:55 minutes) [BR 06]. When § 87(2)(b) notices that § 87(2)(b) is bleeding, she appears to step toward him, to which PO Dethomas says, "Stay back." PO Dethomas places a hand on § 87(2)(b)'s shoulder to keep her from moving forward but does not put hands on her chest. PO Dethomas tells § 87(2)(b) several times to step back when she moves toward § 87(2)(b), often putting a hand on her shoulder to keep her from moving closer to § 87(2)(b). Ultimately, PO Dethomas tells § 87(2)(b) "Ma'am, step back. I'm not going to tell you again. You're going to be in handcuffs." PO Dethomas testified that § 87(2)(b) approached him and ignored several instructions to back away from him and PO Canale, ultimately coming within three feet of PO Dethomas as he attempted to perform crowd control [BR 15]. PO Dethomas warned § 87(2)(b) that if she did not back up, she would be placed in handcuffs. PO Dethomas would have placed § 87(2)(b) in handcuffs solely for obstruction of governmental administration because § 87(2)(b) was obstructing the effecting of an arrest and creating an unsafe situation for officers.

In PO Canale's BWC footage, § 87(2)(b) is seen instructing five bystanders to leave the area because they are making the situation worse (IA from 2:30-3:45 minutes) [BR 04]. § 87(2)(b) is seen turning to § 87(2)(b) and taking a step toward him as she asks if he is okay, ultimately standing within three feet of § 87(2)(b). PO Canale tells § 87(2)(b) to step back several times. § 87(2)(b) complies but approaches § 87(2)(b) again, to which PO Canale says, "Ma'am, do yourself a favor and step back or you're going to come to jail too." PO Canale testified that § 87(2)(b) approached within one foot of PO Canale while § 87(2)(b) was on the ground [BR 14]. PO Canale did not recall telling § 87(2)(b) that she would be arrested if she did not move but noted that § 87(2)(b) was interfering with the officers and could have been arrested for obstructing governmental administration.

New York State Penal Law §195.05 states that a person is guilty of obstructing governmental administration, when he/she intentionally obstructs, impairs or prevents the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of intimidation, physical force or interference [BR 25].

*People v Case*, 42 N.Y.2d 98 (1977) addresses which actions constitute obstruction of governmental administration and specifies that the interference must be, at least in part, physical [BR 26].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Sergeant Joseph Walsh did not obtain medical treatment for § 87(2)(b)**

It is undisputed that § 87(2)(b) did not receive medical attention at the scene of his arrest. He received it later at the stationhouse approximately thirty minutes after PO Canale took him to the ground.

§ 87(2)(b) testified that when he regained consciousness, he was still on the ground, and other officers had arrived [BR 02]. PO Canale picked § 87(2)(b) up off the ground and placed him in a police vehicle. EMS arrived on scene while § 87(2)(b) was in the vehicle but left without examining him. § 87(2)(b) believed that officers had instructed EMS to leave the scene without attending to him. § 87(2)(b) testified that she asked if § 87(2)(b) could go into the ambulance, but an unidentified officer told her it would be better to have § 87(2)(b) go to the stationhouse before being seen by EMS [BR 10]. § 87(2)(b) was then taken to the PSA 7 stationhouse, where he requested medical attention several times over the course of 45 minutes of all officers in the area, but the officers ignored him [BR 02]. EMS ultimately arrived after 45 minutes and took him to § 87(2)(b).

Sgt. Walsh testified that, due to the large crowd and several double-parked cars that would have prevented an ambulance from driving up the street, and with the goal of ensuring § 87(2)(b)'s safety and preventing further injuries to any parties, Sgt. Walsh decided to bring § 87(2)(b) to the stationhouse and have the ambulance take him to the hospital from there [BR 13]. Sgt. Walsh cancelled the ambulance to the scene and redirected it to the stationhouse.

PO Canale, in his testimony, cited the same reasons for redirecting the ambulance, but did not recall who made the decision to do so [BR 14]. PO Dethomas testified that Sgt. Walsh made the decision and instructed him and PO Canale to take § 87(2)(b) to the PSA 7 stationhouse [BR 15]. PO Dethomas did not recall whether the ambulance was cancelled or simply redirected. PO Kendrick testified that Sgt. Walsh ordered the ambulance to be rerouted to the stationhouse [BR 16].

PO Canale's BWC footage from IA 71 from 2:12-3:00 minutes shows that PO Canale instructs several individuals to step back [BR 04]. PO Canale also speaks to an individual who has stopped his car to observe the incident, whom PO Canale instructs to leave the scene.

EMS Electronic PCR for § 87(2)(b) obtained from FDNY notes that Sgt. Walsh's call for an ambulance was first received at 9:19 PM but it was not dispatched until 9:29 PM [BR 11]. The FDNY Event information provided with the report notes that a change in location was requested at 9:31 PM, with EMS arriving at the PSA 7 stationhouse at 9:43 PM. § 87(2)(b) arrived at § 87(2)(b) at 9:55 PM. As previously stated, the PCR also notes that § 87(2)(b) refused to allow EMS to examine him at the stationhouse.

NYPD Patrol Guide Procedure 221-02 regarding the use of force notes that, if a subject is

injured or ill, officers must ensure that the subject receives proper medical attention [BR 18]. Subjects demonstrating any potentially life-threatening symptoms or injuries should receive immediate medical attention. Patrol Guide Procedure 210-04 regarding prisoners requiring medical treatment notes that officers should request an ambulance and remove the prisoner to a hospital directly from the place of arrest, if necessary [BR 20].

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [BR 21].
- PO Canale has been a member of service for four years and has been a subject of three other CCRB cases with 15 allegations, none of which were substantiated. PO Canale's history lists multiple allegations of force which were unsubstantiated, closed as complainant uncooperative, or remain under active investigation.
- Sgt. Walsh has been a member of service for 13 years and has been a subject of four other CCRB cases with 10 other allegations, none of which were substantiated. § 87(2)(g)
- PO Dethomas has been a member of service for six years and has been a subject in two other CCRB cases with 10 allegations, two of which were substantiated.
  - Case 201706642 involved two substantiated stop allegations against PO Dethomas. The Board recommended formalized training, which was implemented by the NYPD.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation.
- On March 4, 2020, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 22].
- § 87(2)(b)
- According to OCA, § 87(2)(b) has no criminal convictions in New York City [BR 24].

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Squad No.: 3

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date